

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 13.09.2006

CORAM:

THE HON'BLE MR. JUSTICE M.E.N.PATRUDU
W.P.Nos.15769 to 15772 of 1996

S.Dharmaraj .. Petitioner in W.P.No.15769/1996
A.Sakthivel ... Petitioner in W.P.No.15770/1996
N.Rangarajan .. Petitioner in W.P.No.15771/1996
N.Saravanasundaram .. Petitioner in W.P.No.15772/1996

Vs

1. The Tamil Nadu Textiles Corporation Ltd.
Rep. by its Chairman
Now in charge : Commissioner of
Handlooms & Textiles
Kuralagam, Madras.
2. The Managing Director
Tamil Nadu Textiles Corporation Limited
15, Huzur Road
Coimbatore - 641 018. Respondents in all Wps
3. P.Chandrasekaran
4. V.Sundararajan
5. S.Raveendran ... Respondents
in W.P.No.15769 & 15770/1996
3. S.Raveendran ... Respondents
in W.P.No.15771 & 15772/1996

W.P.Nos.15769 & 15770/1996

Petitions filed under Article 226 of the Constitution of India praying for the issuance of writ of mandamus directing the respondents 1 and 2 herein to promote the petitioners to the post of Senior Assistant with effect from 1.4.1992, the date on which his immediate juniors, respondents 3 to 5 were promoted as senior Assistants with all monetary

and attendant benefits.

W.P.Nos.15771 & 15772/1996

Petitions filed under Article 226 of the Constitution of India praying for the issuance of writ of mandamus directing the respondents 1 and 2 herein to promote the petitioners to the post of Senior Assistant with effect from 1.4.1992, the date on which his immediate juniors, the 3rd respondent was promoted as senior Assistants with all monetary and attendant benefits.

For Petitioners : Shri.V.Radhakrishnan
in all W.P.s
For Respondents : Shri..C.V.Vijayakumar
1 & 2 for M/s. T.R. Rajaraman
in all W.Ps.
For Respondents : No appearance
3,4 & 5

COMMON ORDER

The petitioners were appointed as an Assistant with the first respondent on 10.07.1981, 07.12.1981, 17.06.1982 and 05.05.1983 respectively in the pay scale of 490-20-650-25-700 and 400-15-490-20-650-25-700 respectively and were placed on probation for one year and after completion of their probation, their services were regularised in the post of Assistant and working at Aruppukkottai Power Loom Complex, Sivagiri Power Loom Complex and Jayankondam Power Loom Complex respectively owned by the first respondent.

2. In W.P.Nos.15769 & 15770/1996, the third respondent was appointed as a Assistant in the same scale of pay on 11.01.1982 and 4th and 5th respondents were appointed 15.03.82 and 01.08.83 respectively and discharging the same duties.

3. In W.P.Nos.15771 & 15772/1998, the third respondent was appointed as a Assistant in the same scale of pay on 01.08.1983.

4. The grievance of the petitioners is that the first respondent have promoted 3rd, 4th, and 5th respondents as a Senior Assistants with effect from 01.04.1992 ignoring the seniority of the petitioners and therefore, their junior have become Senior Assistants and their legitimate expectation have been denied by the first respondent without assigning any reasons. It is also stated that the first respondent has framed service regulations on 07.06.1994 and as per service regulations Annexure I, which deals with appointment, promotion, etc., and Serial No.10 onwards, the post of Assistants are shown and all of them are given the same category with the same scale. Hence, as per regulations also,

the petitioners are working along with 3rd, 4th and 5th respondents in the same scale of pay, but their seniority is ignored and there are no allegations and misconduct.

5. It is also stated that while considering the cases of 3rd 4th and 5th respondents for promotion with effect from 01.04.1992, the first respondent has assigned reason that 3rd, 4th and 5th respondent's are working at Head Office located at Coimbatore, their cases are considered whereas, the petitioners are working at Aruppukkotai, Sivagiri and Jayamkondam, as such their cases are not considered and it is illegal.

6. Shri.V.Radhakrishnan, learned counsel appearing for the petitioners contended that admittedly the petitioners are seniors having been appointed and their services have been regularised and discharging the same duty and 3rd, 4th and 5th respondents are juniors to the petitioners, even according to the counter of the respondents.

7. In the counter of the respondents, it is stated that 3rd, 4th and 5th respondent's are appointed in different category and they are only in the said category, whereas the petitioners cadre is different.

8. Heard Shri..C.V.Vijayakumar, learned counsel for the respondents 1 and 2.

9. The common counter filed by respondents 1 and 2 discloses that the first respondent Corporation owns three Powerloom complexes and Assistants were appointed in the powerloom complexes and were fixed in the pay scale of Rs.400-700 with fixed D.A. as applicable to the powerloom complexes and the Assistants appointed in the Head Office were also posted in the same pay scale of Rs.400-700 and they were made eligible for Government D.A. as applicable to the staff at Head Office.

9.01. However it is stated that the responsibilities of Assistants in the Head Office and the nature of work in powerloom complexes are different and both are not similarly situated and are not holding similar posts with same responsibilities and there shall be no comparison between the two.

9.02 Though this fact is stated in the counter, it is not highlighted why there should be deviation between both. The nomenclature of the posts is one and the same and the scale of pay is also one and the same.

9.03 In the counter at paragraph 3, it is stated that implementation of the IVth pay commission was given effect to the Assistants in the powerloom complexes and their D.A. earned by each of them has been merged with the basic pay giving effect to the position that their pay scale raised to Rs.555-970. Whereas, Assistants in the Head Office pay scale was refixed to Rs.705-1230 taking into consideration of the pay plus

D.A. hitherto drawn by the Assistants in the powerloom complexes.

9.04 It is stated that the implementation of IVth pay commission and the benefits to the Assistants in the powerloom complexes and the Assistants in the Head Office are illustrated.

Scale earlier to IV pay commission is one and the same but the D.A. is fixed only 20% for Assistants in powerloom complexes whereas, 80% for Assistants in Head Office and pay plus D.A. as on 01.10.1985 is Rs.480/- 20% and D.A. for powerloom Assistants and Rs.720/- Government D.A. for Assistants in the Head Office and scale of implementation of IV pay commission for Assistants in powerloom complexes is 555-970 whereas, for the Assistants in the Head Office, it is 705-1230 and pay plus D.A. as on 01.01.1986 for Assistants in powerloom complexes is Rs.637/- whereas, for Assistants in Head Office it is Rs.814/-.

9.05 It is also stated that while implementing Vth pay commission, the pay scales of Assistants in powerloom complexes was revised from Rs.555-970 to Rs.825-1200 whereas for Assistants in the Head Office was revised from Rs.705-1230 to Rs.1200-2040 as per G.O.Ms.No.265, Handlooms, Handicrafts, Textiles and Khadi (C1) Department dated 20.08.1990. But it is stated that subsequently the pay scales of the Assistants in the powerloom complexes were revised from Rs.825-1200 to Rs.1200-2040 with effect from 01.04.1992 which was approved by the Board in its 97th meeting held on 18.03.1992 without the approval of the Government and the request for ratification is still pending before the Government.

10. Therefore, it is clear that the scale of pay is equals between both the Assistants as approved by the board. When both the categories are drawing the same scale and pay as Rs.1200-2040, they must be treated in par with each.

11. Therefore, it is necessary to give suitable directions to the Government to approve the Board's resolution in its 97th meeting held on 18.03.1992. Therefore, the Government is directed to pass necessary orders within 30 days from the date of receipt of this order.

12. When both the posts carries the same scale of pay prior to Ivth pay commission, there should not be any discrimination. Subsequently, both the the posts are designated as Assistants and it is absurd to content that the nature of work is different. How the nature of work is different is not highlighted. When both the post are equal, the employees working in both the posts as Assistants are entitled to be considered for promotion. It is not proper to content that for the promotion to the post of Senior Assistant in the Head Office, the feeder post is only Assistant in the Head Office. It is also not proper to treat the Assistants in powerloom complexes are under separate category. When the powerloom complexes are under the Corporation and when there are Assistants in the powerloom complexes, they should be treated equally with the services of the Assistants working in the Head

Office. Even though it is stated that the Corporation have never recognised seniority of the powerloom Assistants on par with the Assistants in the Head Office.

13. The Court is of the opinion that it is sweet and pleasure of the Corporation to treat as both are recruited for the same post and one is posted in the Head Office and other is posted in the powerloom and by mere posting in different establishment or different office under the same corporation they should be treated equally.

14. Since there is arbitrary attitude on the part of the respondents 1 and 2, the Court is of the opinion that the respondents 1 and 2 should be directed to rectify the mistakes.

15. Further in the additional counter filed on behalf of respondents 1 and 2, it is admitted that the petitioners were recruited through concerned District Employment Exchange to work in the respective powerloom complexes and the petitioners are now working as Assistants.

15.01 In paragraph 3 of the additional counter affidavit, it is clearly stated that there were no such instance of the employees at the Head Office and the Administrative Manual vide G.O.Ms.No.193, Handloom, Handicrafts, Textiles and Khadi Department dated 7.9.1994 brought in parity in the two posts to certain extent. Prior to the approval of the Administrative Manual, the Assistants working in the powerloom complexes were treated as separate category and there was no parity either in the pay scale or in other service conditions. But, pursuant to the approved Administrative Manual, there were several instances whereby the Assistants who were working in the powerloom complexes and the Assistants working in the Head Officer were inter-transferred in the year 1997 and there was single instance like this prior to 1997.

15.02 Thus it is clear that after the approval of the Administrative manual, there are instances of inter-transferring between both Assistants. If the same is being done, the Court is unable to understand why the seniority of Assistants working in powerloom complexes should not be considered for promotion as senior Assistants.

15.03 Though the writ petition is filed in the year 1996, the Administrative Manual has come into force in the year 1994 as admitted by the respondents in paragraph-3. Therefore, the cases of the petitioners must be considered.

15.04 In paragraph 6 of the additional counter, it is stated that there are some Lab Assistants who were working in the Head Office was fixed basic scale of pay of Rs.1200-2040 and they were transferred to work in other sections like Administration, etc., but their seniority is not considered for promotion to the post of senior Assistants even though they are recruited prior to respondents 3 to 5. Even, this procedure adopted by the respondents is bad. A common seniority must be prepared by

the respondents and strictly in accordance with the seniority, irrespective of the nature of the job done by the Assistants, should be given priority. For example, if 10 Assistants are recruited in and one is allotted to Administrative and other is allotted to Accounts and other is allotted to Marketing Section and the other is allotted to the lab, it is improper for the respondents to treat that they are to be considered separately because their nature of work is different. When all of them are recruited to one category, common seniority must be fixed for all of them irrespective of the nature of the works.

15.05 The Board has already approved revised scale of pay in paragraph 13 of the common additional counter. It is stated that Board has approved the revised seniority list of the Assistants based upon the recommendations of the committee on amendment to Administrative Manual of Tamil Nadu Textile Corporation that the date of joining in the post of Assistant after recruitment irrespective of their place of posting as criteria for fixing the inter-se seniority among the Assistants in Tamil Nadu Textile Corporation. Accordingly, the revised seniority list was published vide proceedings of Managing Director, Tamil Nadu Textile Corporation No.IA/34/2000-01, dated 05.01.2001.

16. The Court is happy to note that atleast now the Corporation has realised the mistake in inter-se seniority list is published. Therefore, respondents 1 and 2 are directed to follow the inter-se seniority list and promote strictly in accordance with common seniority list and in accordance with the other rules. But not on whims and fancies such as one who is working as Assistant in Head Office alone is eligible for promotion as senior Assistant.

17. For all the foregoing reasons, the first and second respondents are directed to follow the rules and inter-se seniority with regard to promotion of the Assistants under respondents 1 and 2. If the petitioners are seniors as per inter-se seniority list and if there are no disciplinary action are pending against them, they are entitled to claim their promotion and the same must be considered by the respondents 1 and 2. The respondents 1 and 2 are also directed to maintain inter-se seniority list and for any reason if the respondents 3 to 5 are given promotion ignoring the legitimate expectation of other senior employees and by adopting illegal and arbitrary method, their seniority is to be refixed. Therefore, the board of the first respondent is directed to consider all this matters and issue necessary orders.

With the above observations, the writ petitions are partly allowed.
No costs.

rj

Sd/
Asst. Registrar

/true copy/

Sub Asst.Registrar

To

1. The Chairman.

I/c. Commiissioner of Handloms & Taxtiles,
Kuralagam, MadRAS.

2. The Managing Director,
Tamil nadu Textiles Corporation Ltd,
15, Huzur Road, Coimbatore -641 018.

+ Two CC to Mr. V. Radhakrishnan Advocate SR 42681/06,
SR 42682/06.

+ Four CC to Mr. T.R. Rajaraman Advocate sR 43003,43009 to 43011/06.

+ One CC to Mr. D. Hariparanthaman Advocate SR 43088/06.

TM (co)

sg 29/11/06.

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